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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1239

JOHN GIAGNOCAVO
Appellant

vs.

BUCKS COUNTY COMMISSIONERS :

Joseph Canby
Walter Farley
Charles Meredith III
Appellees

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

MOTION TO DISMISS

PETER A. GLASCOTT, ESQUIRE
BUCKS COUNTY SOLICITOR
ROOM 520, ADMINISTRATION BUILDING
DOYLESTOWN, PENNSYLVANIA
18901

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

JOHN GIAGNOCAVO	:	
Appellant	:	
	:	
vs.	:	
	:	NO. 1239
BUCKS COUNTY	:	
COMMISSIONERS:	:	
Joseph Canby	:	
Walter Farley	:	
Charles Meredith III	:	
Appellees	:	

MOTION TO DISMISS

TO THE HONORABLE,
THE JUSTICES OF THE SAID COURT:

The County of Bucks by its County Solicitor, Peter A. Glascott, Esquire, respectfully requests the Court to dismiss the above-captioned matter, and assigns thereto the following reasons:

1. The appeal was not filed in conformity with statute or the rules of Your Honorable Court in that:

A. The appeal is from a dismissal of a "Petition For Reconsideration of the Order Dated August 18, 1969, Dismissing the Appeals in the Above-captioned Cases". The appealable Order of the Court below was, therefore, dated August 18, 1969, and the appeal to the Supreme Court of the United States was not filed in a timely manner.

B. Appellant was granted an extension until February 6, 1970, for the filing of the record and the docketing of the appeal which was further extended under Rule 13 to February 23, 1970. The same was not filed until February 24, 1970.

2. The Federal question sought to be reviewed was not timely or properly raised in the Court below, nor has it been expressly passed upon by the Court below.

A. In the Court of Common Pleas of Bucks County, No. 783, March Term, 1969, the appellant filed a document called "A Petition for Writ of Mandamus" and attached thereto a Rule to Show Cause why a Preliminary Injunction should not issue. Answer and Preliminary Objections to the Petition and Rule to Show Cause were filed, and after hearing on the Petition for Writ of Mandamus the same was dismissed, and appellant did not request the Court to dispose of the outstanding Petition for Preliminary Injunction, and the matter is, therefore, still pending before the Court of Common Pleas of Bucks County.

B. In the Court of Common Pleas of Bucks County, No. 2018, March Term, 1969, appellant filed a Complaint in Equity requesting a Preliminary Injunction with a Rule to Show Cause why a Temporary Injunction should not issue. Preliminary Objections to the Complaint and the Rule to Show Cause were filed and appellant, without requesting hearing before the Court of Common Pleas of Bucks County, appealed "something" to the Pennsylvania Supreme Court.

C. Neither the Court of Common Pleas of Bucks County nor the Pennsylvania Supreme Court has passed upon the validity or constitutionality of the Pennsylvania Municipalities Planning Code or the Zoning Ordinance of Bucks County adopted in accordance with the said Municipalities Planning Code.

D. The dismissal by the Pennsylvania Supreme Court of the appeals of the appellant abovenamed rests on a completely non-Federal basis in that appellant simply ignored the Rules of Court and statutes concerning appeals to the Pennsylvania Supreme Court.

3. The entire matter raised by the appellant is now moot as to the appellant. The appellant's land is located in Milford Township, Bucks County, Pennsylvania, which township has enacted a zoning ordinance. Under the provisions of Section 602 of the Pennsylvania Municipalities Planning Code, the enactment by a local township of a zoning ordinance acts as a repeal pro tanto of the County zoning ordinance within that particular township. The appellant's land is, therefore, not under and subject to any provisions of the Bucks County Zoning Ordinance.

WHEREFORE, it is respectfully requested that the appeal be dismissed.

Respectfully submitted,

Peter A. Glascott

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